

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL HOLECZY and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Pittsburgh, PA

*Docket No. 03-166; Submitted on the Record;
Issued March 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a ratable hearing loss which would entitle him to a schedule award.

On December 30, 1998 appellant, then a 49-year-old deputy marshal, filed an occupational injury claim alleging that he sustained hearing loss due to exposure to hazardous noise from guns, grenades, prison cell doors, helicopters, airplanes and other sources. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related bilateral hearing loss. The Office referred appellant for evaluation of his hearing loss and, by decision dated March 15, 2002, determined that he did not have a ratable hearing loss which would entitle him to a schedule award. By decision dated and finalized July 24, 2002, an Office hearing representative affirmed the Office's March 15, 2002 decision.

The Board finds that appellant did not sustain a ratable hearing loss which would entitle him to a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

Evaluation of Permanent Impairment (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in the Office’s adoption of this standard for evaluating hearing loss.⁹

On February 17, 1999 the Office referred appellant to Dr. Lester F. Shapiro, a Board-certified otolaryngologist, for an evaluation of his hearing. On March 14, 2002 the Office medical adviser reviewed the otologic and audiologic testing performed by Dr. Shapiro and applied the Office’s standardized procedures to this evaluation.¹⁰ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 10, 15 and 25 respectively. These decibel losses were totaled at 65 decibels and were divided by 4 to obtain the average hearing loss of 16.25 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a figure less than zero. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 15, 15 and 25 respectively. These decibel losses total 75 decibels and when divided by 4, results in an average hearing loss of 18.75 decibels.¹¹ This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a figure

³ *Id.*

⁴ A.M.A., *Guides* at 226-51 (5th ed. 2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald E. Stockstad*, 53 ECAB___ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ Dr. Shapiro determined that appellant sustained high frequency sensorineural hearing loss in both ears due to exposure to hazardous noise at work.

¹¹ The Office medical adviser erred in totaling the right ear decibel loss at 65 decibels. This error was harmless as correcting the calculation does not result in a ratable hearing loss.

less than zero. Therefore, the Office medical adviser properly determined that appellant had no ratable hearing loss.¹²

The July 24 and March 15, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
March 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² On appeal appellant argued that he should be compensated for any amount of hearing loss that is attributable to employment factors. However, as noted above, schedule awards are granted in accordance with established standards based on the A.M.A., *Guides*.